

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NATIONAL CREDIT UNION
ADMINISTRATION BOARD,

Plaintiff,

v.

MARK B. MOODY, *et al.*,

Defendants.

Case No. 2:11-cv-00769-LDG (RJJ)

ORDER

The plaintiff, National Credit Union Administration Board, in its capacity as Liquidating Agent of Ensign Federal Credit Union, has renewed its motion for default judgment (#34) against defendant Mark B. Moody.

Default was entered against Moody on August 19, 2011 (#14). In September 2011, the plaintiff moved for default judgment against Moody (#17). Several days later, Moody filed a motion in proper person requesting additional time to retain and have legal counsel appear in this matter on his behalf (#19). The Court granted that motion (#21), and counsel filed an appearance at the end of October 2011. In mid-November 2011, Moody (through his counsel) filed an answer without having first obtained an order setting aside the default. The Court subsequently granted plaintiff's motion to strike the answer, but

1 denied the plaintiff's original motion for default judgment without prejudice in light of the
2 recent appearance of counsel of Moody's behalf. The Court indicated that plaintiff could
3 renew its motion if Moody failed to move to set aside the default within fourteen days.
4 Moody did not move to set aside the default within fourteen days, and the plaintiff has
5 renewed the motion for default judgment.

6 The record establishes that default has been entered against Moody. Further,
7 subsequent to Moody's retention of counsel, the Court provided Moody an opportunity to
8 move to set aside the default. Despite the additional opportunity to move to set aside the
9 default, Moody did not do so and he remains in default.

10 The plaintiff has established that Russell Ft. Apache and Ensign entered into a
11 "Business Loan Agreement," pursuant to which Ensign loaned \$255,000 to Russell Ft.
12 Apache. Russell Ft. Apache also executed a Promissory Note in favor of Ensign, by which
13 Russell Ft. Apache agreed to repay the amount borrowed according to the terms of the
14 Promissory Note.

15 The plaintiff has further established that Moody signed a Commercial Guaranty by
16 which he personally guaranteed the loan.

17 Pursuant to the terms of the Promissory Note, the interest rate on the Note was
18 8.250%. The Promissory Note further provided that this interest rate would be increased
19 by 2 percentage points to 10.250% upon default. The plaintiff has established that Russell
20 Ft. Apache did not make any payments on the loan, but defaulted on February 1, 2008.

21 The plaintiff has further established that the principal amount owing under the Note
22 as of April 16, 2012, was \$255,000.¹ As of that date, the accrued interest on the
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24 ¹ The Promissory Note was secured by a Deed of Trust relating to certain
25 property. The Deed of Trust, however, was second to a senior Deed of Trust relating to the
26 property. The property was foreclosed upon by another party pursuant to the Deed of
Trust in first position, and the proceeds were insufficient to pay any portion of the defaulted
debt of Russell Ft. Apache's loan to Ensign.

1 outstanding principal amounted to \$111,748.44. Interest continued and continues to
2 accrue at the rate of \$72.60 per day since that date. In addition, late fees in the amount of
3 \$4,470.48 were due as of April 16, 2012.


4 The plaintiff has further reasonably and necessarily incurred attorney's fees in the
5 amount of \$26,147.50, and estimated that it would incur a further \$1,250 in additional fees
6 until this matter is concluded.

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8 Accordingly,

9 THE COURT **ORDERS** that Plaintiff's Renewed Motion for Default Judgment (#34)
10 is GRANTED;

11 THE COURT FURTHER **ORDERS** that Plaintiff shall promptly submit proposed
12 Findings of Fact and Conclusions of Law, and submit a proposed Judgment against Mark
13 B. Moody.

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15 DATED this 28 day of November, 2012.

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18 Lloyd D. George
United States District Judge
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